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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/723,254	11/26/2003	David J. Yonce	279.628US1	6063
21186 7590 07/15/2008 SCHWEGMAN, LUNDBERG & WOESSNER, P.A. P.O. BOX 2938 MINNEAPOLIS, MN 55402				
EXAMINER				
OROPEZA, FRANCES P				
ART UNIT		PAPER NUMBER		
3766				
MAIL DATE		DELIVERY MODE		
07/15/2008		PAPER		

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

# Office Action Summary

**Application No.**

10/723,254

**Applicant(s)**

YONCE ET AL.

**Examiner**

FRANCES P. OROPEZA

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 4/7/08 (Amendment).
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1,4,5,7-11 and 14-17 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1,4,5,7-11 and 14-17 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 07 April 2008 is/are: a) ☒ accepted or b) ☒ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO/SB/08)  
Paper No(s)/Mail Date \_\_\_\_\_
- 4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date \_\_\_\_\_
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: \_\_\_\_\_

**DETAILED ACTION**

***Response***

1. The Applicant amended at least independent claims 1 and 11 in the response filed 4/7/08, hence the rejection of record is withdrawn and a new rejection established in the subsequent paragraphs.

***Claim Rejections - 35 USC § 102***

2. Claims 1, 4, 5, 7, 9-11 and 14-16 are rejected under 35 U.S.C. 102(e) as being anticipated by Levine et al. (U.S. Patent No. 6,748,274).

Levine et al. disclose a method and apparatus for displaying information comprising an implantable device (100) the implantable device comprising a first sensing channel (82 or 84) and a controller (60). The method and apparatus further comprise an external programmer (102) including a display (video display (214) and printer (236)) to show graphical data (waveform and histogram). The electrocardiogram data is compiled with respect to heart rate in specific ranges and over a specified long-term period of time. Events are time stamped/ marked (abstract; figures 2, 3, 5, 8-11B; column 5, lines 33-45; column 7, lines 7-16; column 8, lines 29-33 and 48-52; column 9, lines 1-12; column 10, lines 60-62; column 12, lines 53-54; column 13, lines 59-61; column 14, lines 16-18, 31-34; column 15, lines 5-12; column 15, line 67 – column 16, line 3; column 16, lines 17-19).

As to claims 1, 9 and 11, Levine et al. incorporate by reference Snell et al. (U.S. Patent No. 5,431,691) (column 2, lines 18-28) who disclose recording data continuously

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for discrete time intervals and determining the average for each of the discrete time intervals (column 17, lines 60-66; column 22, lines 5-16). Levine et al. disclose displaying graphical information such as an electrogram from a collection of data (column 15, lines 53-56; column 16, lines 48-51), disclose gathering heart rate information based on ranges of heart rate (column 14, lines 31-34) and discloses the data being recorded over a relatively long period of time (column 14, lines 60-63), hence Levine et al. and Snell et al. are read to teach computing the representative electrogram for each discrete time interval as a time average of electrograms recorded during the discrete time interval when the heart rate is in a specific range.

As to claims 4 and 14, the representative electrocardiogram (IECG) is an intrinsic IECG and are a function of time/ heart rate (column 13, lines 55-57; column 14, lines 31-34; column 15, lines 5-13).

As to claims 5 and 15, the representative electrocardiograms are evoked responses from the evoked response window, collected as paces, and are functions of time/ heart rate (column 4, lines 3-6; column 7, lines 42; column 15, lines 5-13; column 15, line 52 - column 16, line 3).

As to claims 7 and 16, the display screen 9214) or the printer (236) display the representative electrocardiogram (figure 5).

As to claim 10, the controller maintains representative electrocardiograms being discarded (column 14, lines 63-67).

***Claim Rejections - 35 USC § 103***

3. Claims 8 and 17 are rejected under 35 U.S.C. 103(a) as being unpatentable over Levine et al. (U.S. Patent No. 6,748,274) in view of Palmer et al. (U.S. Patent No. 5,830,150). As discussed in paragraph 2 of this action, Levine et al. disclose the claimed invention except for the graphic display having the magnitude of the electrocardiogram displayed in shading or color.

Palmer et al. teach data display using a graphic display having the magnitude of the electrocardiogram displayed in shading or color for the purpose of highlighting changes in the condition of the patient. It would have been obvious to one having ordinary skill in the art at the time of the invention to have the magnitude of the electrocardiogram displayed in shading or color in the Levine et al. system in order for the caregivers to become more easily aware of striking events and more subtle events, the caregiver's eyes being drawn by the colors to the variable at the time of its change so appropriate care can be provided for the patient's changing condition (column 1, lines 53-55; column 3, lines 6-18; column 4, lines 1-26; column 5, lines 1-23).

***Drawings***

4. In the drawing submitted 4/7/08, two different drawings are labeled "Figure 3A". Appropriate correction is required.

***Statutory Basis***

5. The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

***Conclusion***

Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Fran Oropeza whose telephone number is (571) 272-4953. Fran's schedule typically is Monday and Tuesday 9AM-7PM EST. If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Carl H. Layno can be reached on (571) 272-4949. Carl's schedule typically is Monday, Wednesday, Friday 9AM-5 PM EST; Tuesday, Thursday 9AM-3PM and 9PM-11PM EST. The fax phone numbers for the organization where this application or proceeding is assigned is (571) 273-8300 for regular communication and for After Final communications.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications

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may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

/Frances P. Oropeza/  
Patent Examiner, Art Unit 3766

/Carl H. Layno/  
Supervisory Patent Examiner, Art Unit 3766